

21 C.J.S. Courts § 157

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Courts

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V. Rules of Practice and Procedure

A. Rules of Practice and Procedure, Generally

1. In General

§ 157. Matters subject to regulation

[Topic Summary](#) | [References](#) | [Correlation Table](#)

West's Key Number Digest

West's Key Number Digest, [Courts](#)  80, 80(1) to 80(5)

A court may not adopt rules that are primarily substantive in nature or that establish, abrogate, or modify substantive rights.

Courts may be limited to establishing rules that may be characterized as procedural.¹ Practice and procedure encompasses the course, form, manner, means, method, mode, order, process, or steps by which a party enforces substantive rights or obtains redress for their invasion; it is the method of conducting litigation involving rights and their corresponding defenses.² "Substantive law" creates, defines, and regulates rights as opposed to prescribing methods of enforcing the rights or obtaining redress for their invasion.³

A court may not adopt rules that are primarily⁴ substantive in nature⁵ or that establish, abrogate, or modify substantive rights.⁶ A rule that is principally procedural is not rendered invalid, however,

merely because it may have substantive impact.⁷ A state supreme court may defer, as a matter of comity, to limited legislative involvement in procedural matters while still retaining its inherent rulemaking authority over the courts and their procedures.⁸

Subject to the principle that rules of courts may not contravene constitutional and statutory provisions or regulate legal rights, the courts may promulgate rules relating to various particular matters,⁹ such as pleading and evidentiary matters,¹⁰ the implementation of constitutional or statutory speedy trial rights,¹¹ the fixing of orderly time limitations,¹² the regulation of time limits for judicial decisions,¹³ the issuance of a search warrant,¹⁴ the selection of juries in criminal cases,¹⁵ venue,¹⁶ and the proscribing of frivolous litigation and the imposition of sanctions.¹⁷ A court's authority to make rules regarding the assessment of costs is not inherent in the judicial power but instead arises from a specific legislative grant that authorizes the court to promulgate such rules.¹⁸

Rules of court may validly regulate the procedural aspects of admitting and recognizing evidence.¹⁹ Specifically, a state supreme court has inherent judicial authority to regulate and supervise the rules that govern the admission of evidence in the lower courts.²⁰ However, rules are invalid that try to control the rights of parties in the matter of evidence that is admissible under the general principles of law.²¹ A court may promulgate a rule providing for the advisement of the right to counsel as soon as feasible after arrest as the rule regulates the preservation of evidence which is a procedural matter and a proper subject for regulation under state court rules.²²

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Footnotes

- 1 Conn.—*In Re Samantha C.*, 268 Conn. 614, 847 A.2d 883 (2004).

Minn.—*In re Welfare of R.S.*, 805 N.W.2d 44 (Minn. 2011).

Va.—*State v. Arbaugh*, 215 W. Va. 132, 595 S.E.2d 289 (2004).

Procedure and substance distinguished
For purposes of determining province of the courts, rules of procedure are those that address methods by which rights are enforced while substantive law is that part of the law which creates, defines, and regulates rights.

Pa.—*Payne v. Commonwealth Dept. of Corrections*, 582 Pa. 375, 871 A.2d 795 (2005).

Wash.—*State v. Templeton*, 148 Wash. 2d 193, 59 P.3d 632 (2002).

2 Fla.—*State v. Raymond*, 906 So. 2d 1045 (Fla. 2005).

- 3 Minn.—*In re Welfare of R.S.*, 805 N.W.2d 44 (Minn. 2011).
- 4 Fla.—*State, Dept. of Health and Rehabilitative Services, Division of Youth Services v. Golden*, 350 So. 2d 344 (Fla. 1976).
- 5 Idaho—*State v. Bicknell*, 140 Idaho 201, 91 P.3d 1105 (2004).
- 6 Conn.—*In Re Samantha C.*, 268 Conn. 614, 847 A.2d 883 (2004).
- Mich.—*People v. Glass*, 464 Mich. 266, 627 N.W.2d 261 (2001).
- Causes of action**
The state constitution does not confer upon the court of appeals the power to, by rule, add substantive elements to causes of action.
- Md.—*Consolidated Const. Services, Inc. v. Simpson*, 372 Md. 434, 813 A.2d 260 (2002).
- 7 N.J.—*Assoulin v. Sugarman*, 159 N.J. Super. 393, 388 A.2d 260 (App. Div. 1978).
- 8 Minn.—*State v. Wolf*, 605 N.W.2d 381 (Minn. 2000).
- 9 N.J.—*Cirelli v. Ohio Cas. Ins. Co.*, 72 N.J. 380, 371 A.2d 17 (1977).
- 10 Miss.—*USF&G Ins. Co. of Miss. v. Walls*, 911 So. 2d 463 (Miss. 2005).
- Me.—*In re Estate of McCormick*, 2001 ME 24, 765 A.2d 552 (Me. 2001).
- Marital privilege**
Minn.—*State v. Gianakos*, 644 N.W.2d 409 (Minn. 2002).
- Impeachment by a prior conviction**
Fla.—*State v. McFadden*, 772 So. 2d 1209 (Fla. 2000).
- 11 Fla.—*Julian v. Lee*, 473 So. 2d 736 (Fla. 5th DCA 1985).
- 12 Miss.—*Hines v. State*, 472 So. 2d 386 (Miss. 1985).
- 13 Wis.—*Complaint Against Grady*, 118 Wis. 2d 762, 348 N.W.2d 559 (1984).
- 14 Pa.—*Com. v. Dumont*, 370 Pa. Super. 155, 536 A.2d 342 (1987).
- 15 Kan.—*State v. Mitchell*, 234 Kan. 185, 672 P.2d 1 (1983).
- 16 Ind.—*State ex rel. Hatcher v. Lake Superior Court, Room Three*, 500 N.E.2d 737 (Ind. 1986) (change of venue).
- Wash.—*Sherwin v. Arveson*, 96 Wash. 2d 77, 633 P.2d 1335 (1981).
- 17 N.Y.—*A.G. Ship Maintenance Corp. v. Lezak*, 69 N.Y.2d 1, 511 N.Y.S.2d 216, 503 N.E.2d 681 (1986).
- 18 Ill.—*Vicencio v. Lincoln-Way Builders, Inc.*, 204 Ill. 2d 295, 273 Ill. Dec. 390, 789 N.E.2d 290 (2003).
- 19 Ariz.—*State ex rel. Collins v. Seidel*, 142 Ariz. 587, 691 P.2d 678 (1984).
- Uniform Rules of Evidence**
Ark.—*Ricarte v. State*, 290 Ark. 100, 717 S.W.2d 488 (1986).
- 20 Minn.—*State v. Obeta*, 796 N.W.2d 282 (Minn. 2011).

21 Wash.—*State v. Pavelich*, 153 Wash. 379, 279 P. 1102 (1929).

22 Wash.—*State v. Templeton*, 148 Wash. 2d 193, 59 P.3d 632 (2002).

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